

**ASSEMBLY BILL**

**No. 434**

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**Introduced by Assembly Member Hagman**

February 15, 2013

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An act to amend Section 402.5 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 434, as introduced, Hagman. Preferred shares: rights and preferences distributions.

Existing law authorizes a corporation to issue one or more classes or series of shares, as specified, including designating a class or series of shares as “preferred,” which are defined as shares other than common shares.

Under existing law, a corporation may make a distribution to the corporation’s shareholders only if certain conditions are met. Existing law prohibits a corporation from making a distribution to its shareholders unless the board of directors determines that either (1) the amount of retained earnings of the corporation immediately prior to the distribution equals or exceeds the sum of the amount of the proposed distribution plus the preferential dividends arrears amount, or (2) immediately after the distribution, the value of the corporation’s assets would equal or exceed the sum of its total liabilities plus the preferential rights amount. Existing law defines “preferential dividends arrears” and “preferential rights amount” for these purposes.

Existing law authorizes the rights, preferences, privileges, and restrictions imposed on a class or series of preferred shares to exclude specified provisions that would otherwise be required by law.

This bill would also authorize the rights, preferences, privileges, and restrictions imposed on preferred shares to exclude specified rights to a preferential dividends arrears amount, preferential rights amount, or both in a distribution to the corporation's junior shareholders.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 402.5 of the Corporations Code is  
2 amended to read:

3 402.5. The rights, preferences, privileges, and restrictions  
4 granted to or imposed upon a class or series of preferred shares  
5 (Section 176) the designation of which includes either the word  
6 “preferred” or the word “preference” may:

7 (a) Notwithstanding paragraph (9) of subdivision (a) of Section  
8 204, include a provision requiring a vote of a specified percentage  
9 or proportion of the outstanding shares of the class or series that  
10 is less than a majority of the class or series to approve any  
11 corporate action, except where the vote of a majority or greater  
12 proportion of the class or series is required by this division,  
13 regardless of restrictions or limitations on the voting rights thereof.

14 (b) Notwithstanding paragraph (5) of subdivision (a) of Section  
15 204, provide that in addition to the requirement of subdivision (a)  
16 of Section 1900 the corporation may voluntarily wind up and  
17 dissolve only upon the vote of a specified percentage (which shall  
18 not exceed  $66\frac{2}{3}$  percent) of such class or series.

19 (c) ~~Provide~~ *Notwithstanding subdivision (a) of Section 500,*  
20 *provide that Section 502 or 503 not apply in whole or in part with*  
21 ~~respect to distributions on shares junior to the class or series a~~  
22 *distribution may be made without regard to the preferential*  
23 *dividends arrears amount, or any preferential rights amount, or*  
24 *both, as described in paragraphs (1) and (2) of subdivision (a) of*  
25 *Section 500.*